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1 UNITED STATES PATENT AND TRADEMARK OFFICE
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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6
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8 *Ex parte* LAURENT FERENCZI and
9 FREDERIC BARTH
10
11

12 Appeal 2009-008516
13 Application 10/528,170
14 Technology Center 3600
15
16

17 Before MURRIEL E. CRAWFORD, ANTON W. FETTING, and
18 JOSEPH A. FISCHETTI, *Administrative Patent Judges*.
19 FETTING, *Administrative Patent Judge*.

20 DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Laurent Ferenczi and Frederic Barth (Appellants) seek review under 35 U.S.C. § 134 (2002) of a final rejection of claims 25-28, the only claims pending in the application on appeal.

We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION²

We AFFIRM.

THE INVENTION

The Appellants invented an installation of monitoring gas cylinders. Specification 1:2-3.

An understanding of the invention can be derived from a reading of exemplary claim 25, which is reproduced below [bracketed matter and some paragraphing added].

25. An installation storing cylindrical containers, comprising:

[1] plural cylindrical containers that each has an identification medium associated therewith;

[2] a delimited storage zone with plural locations that each stores a respective one of said cylindrical containers, said

² Our decision will make reference to the Appellants' Appeal Brief ("App. Br.," filed May 7, 2007) and the Examiner's Answer ("Ans.," mailed September 17, 2007), and Final Rejection ("Final Rej.," mailed February 21, 2007).

storage zone having a first access that provides direct and simultaneous access to all of said plural locations, and a first door and a first lock in said first access;

[2] a reader for reading the identification medium on a respective one of said cylindrical containers as the respective container passes through said first access;

[3] a delimited access bay providing access to said first access, said access bay being adjacent to said storage zone and having a second access, and a second door and a second lock in said second access; and

[4] an authorization device receiving information from a user desiring access to said storage zone and determining whether the user is authorized to enter said storage zone, said authorization device operating said first and second locks and controlling said first and second locks so that said first and second doors are not open simultaneously.

THE REJECTIONS

The Examiner relies upon the following prior art:

Zekich	US 4,586,441	May 6, 1986
McCarrick et al.	US 5,953,682	Sep. 14, 1999

Claims 25-28 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Zekich and McCarrick.

ISSUES

The issue of whether the Examiner erred in rejecting claims 25-28 under 35 U.S.C. § 103(a) as unpatentable over Zekich and McCarrick turns on whether Zekich and McCarrick describe the limitations of claims 25-28 and

whether a person with ordinary skill in the art would have combined the gas cylinders and cabinets described by McCarrick to Zekich's security system.

FACTS PERTINENT TO THE ISSUES

The following enumerated Findings of Fact (FF) are believed to be supported by a preponderance of the evidence.

Facts Related to the Prior Art

Zekich

01. Zekich is directed to integrated security systems for selectively allowing entry into a secure region upon positive determination of entry conditions. Zekich 1:8-11.

02. The security system generally comprises a revolving door having an upright vertical center shaft and three spaced apart upright wings. Zekich 2:34-41. A drum is provided for partially enclosing the wings. Zekich 2:45-47. The drum includes facing substantially semicircular curved panels and extending outwardly on opposing sides of the curved panels are front walls for preventing access and creating a non-secure entryway accessible to the public. Zekich 2:48-56. A pushbutton reader, such as a combination lock or card reader, is attached to the entryway. Zekich 2:57-61. A user submits a magnetic card containing identification information for access. Zekich 5:9-16. Initially, an individual is enrolled for use of the system by submitting hand geometry information and is issued a magnetic card. Zekich 5:19-

22. The wings divide the revolving door into three moveable cylindrical segments. Zekich 3:5-8. A first segment opens to a non-secure entryway, a second segment is completely closed off, and a third segment is open to the mid-zone only. Zekich 3:16-21. The mid-zone is a semi-secure region consisting of an explosives detector. Zekich 3:25-34. The explosives detector collects an air sample and analyzes the gases in the sample to determine whether the subject is carrying explosives. Zekich 3:33-41. On the opposite side of the mid-zone is a guard room. Zekich 4:45-46. The guard room provides an area whereby the actions of those in the mid-zone seeking entrance to the secure area may be monitored. Zekich 4:50-52. Adjacent to the mid-zone is a search room, which provides an area for shutting off individuals who have not passed the successive determinations require by the system. Zekich 5:25-28. A second revolving door opposite the first is a secure region revolving door. Zekich 5:54-66.

McCarrick

03. McCarrick is directed to a computerized cylinder monitoring system and a process for monitoring gas cylinders. McCarrick 1:6-8. McCarrick describes that it is desirable to maintain on hand only the amount of raw materials, including process gases, necessary to insure continuity of operations in order to control costs. McCarrick 1:34-36.

04. McCarrick describes a data storage device, comprising an inventory control collar, is placed on the neck of a gas storage

cylinder or tank. McCarrick 1:59-62. The data storage device further includes a pressure gauge and a resident memory capable of storing an identification number, container serial number, owner name and site, etc. McCarrick 1:64-67. The gas cylinders are stored in enclosures such as cabinets, which are equipped with data read/write devices connected to the controller of the cabinet to lock the cabinet. McCarrick 3:54-57. If a cylinder does not contain the correct gas, the cabinet controller will not unlock the cabinet thereby providing enhanced safety features. McCarrick 4:1-4. A leak detection and alarm function are also included in the system. McCarrick 8:62-64.

05. The inventory control collar is first initialized to include an identification number, container serial number, owner name and site, and current location. McCarrick 5:22-29. The collar further includes information representing the origin point of the cylinder, manifest number, shipping date, destination, destination order number and product, destination receiving date and by whom the cylinder is received. McCarrick 5:30-34. This information is also entered into the host computer. McCarrick 5:37-39. Additional information stored in the collar includes the date when the cylinder was last filled, the date the cylinder was placed in to service, and the date when the cylinder was last accessed by a read/write device. McCarrick 5:63-67.

ANALYSIS

*Claims 25-28 rejected under 35 U.S.C. § 103(a) as unpatentable over
Zekich and McCarrick*

The Appellants first contend that (1) Zekich fails to describe storing items in a delimited storage zone beyond the security gate or for identifying the items as they pass through the security gate leading to the storage zone. App. Br. 5. The Appellants specifically argue that the claimed invention requires the two storage zones of a delimited storage zone and a delimited access bay and Zekich fails to describe these two storage zones.

We disagree with the Appellants. Zekich describes a security system for allowing passage of individuals to a secure area. FF 01. The security system has a structure consisting of two revolving doors separated by a mid-zone area. FF 02. Also within the structure are a guard room and a search room. FF 02. As such, Zekich describes multiple zones that can function as delimited storage zones. Specifically, the mid-zone and search room can serve as a delimited storage zone and a delimited access bay. Zekich further describes the entryway includes an attached pushbutton reader or a card reader. FF 02. This requires any item or person to be identified with an identification or security code in order to access the storage zone. As such, Zekich also describes identifying items as they pass the security gate to the storage zone.

The Appellants further contend that (2) Zekich fails to describe plural cylindrical containers that each has an identification medium associated therewith, a delimited storage zone with plural locations that each stores a respective one of the cylindrical containers, and a reader for reading the

1 identification medium on a respective one of the cylindrical containers as the
2 respective container passes through the first access. App. Br. 5. We
3 disagree with the Appellants. The Appellants' contention does not persuade
4 us of error on the part of the Examiner because the Appellants are
5 responding to the rejection by attacking the references separately, even
6 though the rejection is based on the combined teachings of the references.
7 Nonobviousness cannot be established by attacking the references
8 individually when the rejection is predicated upon a combination of prior art
9 disclosures. *See In re Merck & Co. Inc.*, 800 F.2d 1091, 1097 (Fed. Cir.
10 1986).

11 The Appellants contend that (3) a person with ordinary skill in the art
12 would not have combined the references as proposed by the Examiner. App.
13 Br. 4 and 6-8. We disagree with the Appellants.

14 McCarrick describes a gas cylinder monitoring system. FF 03. The gas
15 cylinder monitoring system includes a data storage device, such as an
16 inventory collar, attached to the cylinder. FF 04. The data storage device
17 further includes a pressure gauge and memory to store other attributes of the
18 gas cylinder. FF 04. Additionally, the gas cylinders are stored in cabinets
19 that provide safety features, such as preventing access to the cylinder if the
20 correct gas is not loaded in to the cylinder. FF 04. As such, McCarrick is
21 concerned with monitoring the safety and security of the gas cylinders.

22 Zekich is also concerned with the safety and security of leaking gas and
23 addresses this concern by describing an explosives detector that analyzes the
24 air samples for explosive gases. FF 02. A person with ordinary skill in the
25 art concerned with the safety and security of gas cylinders of McCarrick

1 would have looked to references discussing securing movement of
2 potentially explosive entities such as Zekich to increase the security of the
3 movement of gas cylinders. Although Zekich's embodiment offers a
4 different context, a person with ordinary skill in the art trying to solve the
5 problem of securing explosive containers would have looked to Zekich for
6 security concerns with predictable results since Zekich is specifically
7 concerned with analyzing gas. "When a work is available in one field of
8 endeavor, design incentives and other market forces can prompt variations of
9 it, either in the same field or a different one. If a person of ordinary skill can
10 implement a predictable variation, § 103 likely bars its patentability." *KSR*
11 *Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740 (2007). As such, a person
12 with ordinary skill in the art would have found it predictable and therefore
13 obvious to combine Zekich and McCarrick in order to increase the security
14 and safety associated with gas cylinders.

15 The Appellants also contend that (4) Zekich fails to describe a first
16 device for dispensing the identification medium that is associated with a
17 respective one of the containers only when said first and second doors are
18 closed, as per claim 26. App. Br. 9-10. We disagree with the Appellants.

19 Zekich describes a system that enrolls an individual by collecting hand
20 geometry information from the user to create a magnetic card that provides
21 the user access. FF 02. That is, the individual is restricted from access from
22 the revolving doors until the individual is issued an identification magnetic
23 card. As such, Zekich describes a system for dispensing an identification
24 medium and further suggests the revolving doors are closed to the individual
25 until the individual has received access.

1 The Appellants additionally contend that (5) the references fail to
2 describe the feature to provide a terminal that determines a respective
3 location in which a respective container is stored and of an identity of a user
4 who moved the respective container to the respective location, as per claim
5 27. App. Br. 10. We disagree with the Appellants.

6 McCarrick describes an inventory control collar that is placed on the
7 neck of a gas storage cylinder or tank. FF 04. The inventory control collar
8 contains the owner, the current location, the point of origin, the destination
9 point, and the received by information of the gas cylinder. FF 05. As such,
10 McCarrick describes the location of the gas cylinder and further suggests an
11 owner of the gas cylinder who is responsible for the movement and location
12 of the gas cylinder.

13 The Appellants further contend that (6) the references fail to describe the
14 feature where the terminal determines the respective location of the
15 respective container based on the installation-wide positioning system and
16 records movement of the container over time. We disagree with the
17 Appellants.

18 As discussed *supra*, McCarrick describes an inventory control collar on
19 a gas cylinder contains information on the current location of the gas
20 cylinder, the point of origin of the gas cylinder, and a destination address.
21 FF 05. The information from the inventory control collar is also recorded
22 and managed by the host system. FF 05. As such, McCarrick describes this
23 feature.

24

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claims 25-28 under 35 U.S.C. § 103(a) as unpatentable over Zekich and McCarrick.

DECISION

The rejection of claims 25-28 under 35 U.S.C. § 103(a) as unpatentable over Zekich and McCarrick is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1)(iv) (2007).

AFFIRMED

mev

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